IN THE PUNJAB AND HARYANA HIGH COURT AT

CHANDIGARH

CWP No.14888 of 2007
Date of decision: 06.12.2007

Dr. H.K. Tewari.

…Petitioner

Vs.

The Punjab Agricultural University, Ludhiana and others.

…Respondents

CORAM:

HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE KANWALJIT SINGH AHLUWALIA

Present: Mr. M.K. Tiwari, Advocate
for the petitioner.

Ms. Bindu Goel, Advocate
for respondents.

ADARSH KUMAR GOEL, J.

This petition seeks quashing of penalty of lowering of two stages of pay imposed against the petitioner.

Case of the petitioner is that he was working as Senior Mycologist in Punjab Agricultural University, Ludhiana. He retired from service on 1.6.2005 as Head of the Department of Microbiology. He was given a chargesheet dated 24.6.2003, Annexure P-1, alleging that on conducting physical verification, items valuing Rs.13,738.17/- claimed to have been supplied by the contractor, were found missing. The petitioner had released payment of Rs.21,731/- to the contractor after giving a certificate

that the contract work of the contractor was satisfactory. This amounted to misappropriation.

The petitioner denied the charge. An inquiry was held. The Inquiry Officer held the charges to be proved.

Show cause notice was given to the petitioner, which he replied and thereafter, impugned order of punishment dated 13.5.2004 was passed, lowering the pay of the petitioner by two stages till retirement. The petitioner filed an appeal which was dismissed vide order dated 24.11.2005. The petitioner also filed a review, which was dismissed on 24.7.2007.

We have heard learned counsel for the petitioner and perused the record.

Contention raised on behalf of the petitioner is that mere negligence or lapse in performance of duties or error of judgment, will not constitute misconduct unless damage caused is heavy and degree of culpability is high. Reliance has been placed on a judgment of the Hon'ble Supreme Court in ***Union of India and others v. J. Ahmed*** AIR 1979 SC 1022.

We do not find any merit in the contention that the allegation against the petitioner did not amount to any misconduct. Any act or omission which is inconsistent with due and faithful discharge of duties is recorded as misconduct. In certain situations, even in absence of *mens rea*, there can be misconduct. Reference may be made to judgment of the Hon'ble Supreme Court in ***State of Punjab v. Ram Singh Ex. Constable*** AIR 1992

SC 2188 and ***Punjab State Civil Supplies Corp. Limited*** *v.* ***Sikander Singh*** AIR 2006 SC 1438. Whether a particular allegation amounts to misconduct or not, depends upon a given fact situation. In the present case, the petitioner gave a certificate of completion of work by the contractor though the goods claimed to have been supplied were never supplied. Even if it is assumed that the petitioner did not have any dishonest intention, there was negligence and disciplinary proceedings for the act and omission of the petitioner, could not be held to be arbitrary.

The judgment relied upon is distinguishable. Therein, the officer failed to prevent the riot and damage caused in the disturbances. The officer was posted as Deputy Commissioner. It was held that there may have been failure to maintain highest standards of ability, but that by itself was not misconduct. In the present case, the said judgment does not advance the case of the petitioner.

Learned counsel for the petitioner last submitted that he having retired after long service, penalty of lowering of two stages of pay, was excessive.

Though normally this Court does not interfere with the quantum of penalty under Article 226 of the Constitution if the charges are established, the doctrine of proportionality being a part of non-arbitrariness, can be invoked where punishment imposed is grossly unjust. Reference may be made to the judgment of the

Hon'ble Supreme Court in ***State of U.P.*** ***v.*** ***Jaikaran Singh*** (2003) 9 SCC 228.

In the present case, having regard to long service which the petitioner had already rendered and the nature of allegation, penalty imposed calls for interference. For this purpose, we do not consider it practical in the interest of justice to require a fresh order being passed.

Accordingly, we direct substitution of the punishment of stoppage of two increments with cumulative effect in place of punishment imposed in the impugned order.

The petition is disposed of accordingly.

(ADARSH KUMAR GOEL)
JUDGE

December 06, 2007 **(KANWALJIT SINGH AHLUWALIA)**

ashwani **JUDGE**